

EXHIBIT 16

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
3 1:19-cv-00477-CCE-LPA

4 THE ESTATE OF NAJEE ALI BAKER,
5 by and through his Ancillary
Administrator, Jemel Ali Dixon,
6 Plaintiff,

V.

7 WAKE FOREST UNIVERSITY, a North
Carolina non-profit corporation
8 and institution of higher education,
et al.,

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Defendants.

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Reported by: Audra M. Smith, RPR, ECR

Video by: David Cooper

1 you long-winded answers and things that are
2 elliptical, please don't hesitate to tell me to
3 bring it back and stop me and say, Look, you're not
4 responding to the question.

5 Q I will do that. My mother is a college
6 professor, and she's never given a one-word answer
7 in her life, so I'm familiar with what you're
8 saying.

9 Am I correct in assuming that you're
10 familiar with the security approaches that are used
11 at different colleges?

12 A Well, bearing in mind that there are huge
13 numbers of colleges throughout the nation. As a --
14 retired now, but as a professor at FSU for 20 years,
15 I have pretty good familiarity with the practices of
16 colleges and universities, and of course we have
17 some specialized information here with regard to
18 this incident in terms of the measures that other --
19 I think something like ten other colleges were
20 taking in the general area.

21 Q Right. And we'll get to that in a few
22 minutes, but if I wanted to ask you, Dr. Kirkham,
23 how do they do things at X college, other than Wake
24 Forest, what do you have personal knowledge of --
25 the one that immediately comes to mind is Florida

1 State. Are you familiar with large event management
2 and security at Florida State?

3 A Bearing in mind I'm many years removed
4 from the university. And even when I was there, as
5 I say in my report, I worked as a city police
6 officer on a part-time basis as part of my research.
7 I never was involved in the management of, you know,
8 large scale entertainment events.

9 The closest contact I've had to that would
10 be over the years cases that relate to large
11 entertainment events, whether they're at Disney or a
12 rock concert or some other venue.

13 Q Okay. What I'm really trying to get to
14 here is, are there any colleges or universities that
15 you have personal knowledge or familiarity with the
16 way they do large event or security so that I can
17 say, Dr. Kirkham, how do they do it at that college?

18 A No. Again, you know, there's a vast
19 number of colleges. Almost everyday, watching the
20 news or something, I hear about a new college I
21 didn't know existed. So, no, there's such an
22 enormous number of them that I couldn't profess
23 any -- unless it just happened to be a school I've
24 had contact with, but I would say no.

25 Q And this is a good example of us talking

1 past each other. I'm not trying to get an
2 understanding as to whether or not you're familiar
3 with how security or large event management works at
4 every college. What I'm trying to understand is:
5 Do you have personal knowledge about how large event
6 management and security is handled at any college?

7 A No, I really don't. The only context for
8 me that I can relate to with respect to that
9 question would be other kinds of large management
10 events in other contexts, other venues that are not
11 college or university-related.

12 Q Okay. And so what are some large event or
13 large event venues that you are familiar with how
14 they manage and handle security?

15 A Well, large -- I mentioned rock concerts.
16 I had some of those.

17 Q Can you be specific? I'm really looking
18 for something in the past five years that you can
19 say, you know, Bob, I understand how they did it at,
20 you know, the Who concert in 2016. Give me
21 specifics.

22 A A private club, for example. I have of
23 one particular -- well, actually, a couple of
24 instances. One is currently in litigation in Belle
25 Glade, Florida where there was a very large venue

1 with very little -- virtually no security, a history
2 of problems, and an individual was severely beaten.
3 That's a current case.

4 And I'm thinking of another one that was
5 something similar to that at a private country club.
6 It involved college students, a large number of
7 college students who rented this venue, and that
8 resulted in a homicide by firearm in a parking area.
9 That's been a year or so ago.

10 So there are a lot of the things like that
11 over the years. I'm sure other cases that just
12 don't come to mind right now.

13 Q Okay. And let me circle back to the
14 colleges and universities to make sure we're on the
15 same page. Am I correct in understanding that you
16 can't testify to how security or large event
17 management is handled at any colleges or
18 universities today?

19 MR. FAZZOLA: Object to form.

20 A I could not testify as to a specific
21 college's protocol -- specific college protocol for
22 handling events. I can represent to you that there
23 are widely accepted, standardized procedures for
24 large entertainment events, material put out by
25 OSHA, material put out by the United States

1 Department of Justice, by the American Society of
2 Industrial Security. There's a lot of -- a lot of
3 material. In fact, one is called Planning Large
4 Entertainment Events, Office of Homeland Security.

5 There's a lot of -- a lot of procedural
6 material out there. It's all pretty standard in
7 terms of you could plug it into any number of
8 different contexts, and that's the way it's
9 designed.

10 BY MR. KING:

11 Q Okay. And let me give you an example.
12 What I had in mind was -- or originally I was going
13 to ask you if you were familiar with how large
14 events are managed and security is handled at
15 Florida State football games, Florida State
16 basketball games, Florida State concerts. Is that
17 something you've got personal knowledge of?

18 A Well, only in the sense of wearing two
19 hats during my 20 years or 18 of my 20 years at
20 FSU -- being also a fully sworn police officer on a
21 part-time basis -- I would provide the -- be
22 assigned to provide security at football games, for
23 example. Working inside the stadium or parking
24 areas. But I would -- that doesn't -- that did not
25 give me any specific knowledge about how university

1 police worked; their overall plan for allocating
2 security.

3 Q Okay. How long ago were you a police
4 officer?

5 A The last time I tendered my resignation in
6 19- -- I think August of 1991.

7 Q Thirty years ago this August, if I'm doing
8 the math right?

9 A Yeah, yeah.

10 Q You think law enforcement has changed in
11 the last 30 years?

12 A Oh, of course. And one of the -- one of
13 the tasks of my assistants is to -- particularly
14 Mr. Gregg, is to keep me apprized of all the very,
15 very rapid changes in technology and procedures and
16 equipment. Every now and then, someone comes up
17 with a new piece of equipment that I've not had a
18 case dealing with. So I try to keep abreast of
19 those many changes -- and they are many -- that
20 relate to everything from training to procedures,
21 just a lot of things, technology.

22 Q Okay. And have you ever been retained to
23 advise a college or university about how to improve
24 their security or event management?

25 A No, on that point. I am -- obviously, I'm

1 a criminologist, but I'm a criminologist who
2 everything is so specialized these days, like a
3 doctor who does gynecology but not obstetrics. I'm
4 sort of that way. I do litigation-related
5 evaluations and have for many years. But I don't --
6 I could have -- I have the knowledge to, but I do
7 not do things like Mr. Moss and Mr. Williams with
8 Developmental Associates. They're both former
9 chiefs of police. They come in and give hands-on
10 evaluations and make recommendations. And there are
11 groups, International Association of Chiefs of
12 Police, and Police Executive Research Forum. They
13 do the same kind of thing. I've just have never
14 done that type of work. I've been approached to do
15 it, but I've never done it.

16 Q Okay. And what I'm trying to avoid is
17 frankly being surprised by you telling me later
18 that, you know, I was hired by Duke University to
19 look at their security protocols or something like
20 that, and my understanding is that, the answer to my
21 question as to whether or not you've ever been
22 retained by a university to evaluate or improve the
23 large event management or security, the answer is
24 no. Is that correct?

25 A That is correct.

1 Q Okay. Thank you. Back to the really
2 basics. What does criminology mean?

3 A Basically, criminology is the scientific
4 study of the causes of crime and delinquencies. I
5 includes our three-part system of courts,
6 corrections and law enforcement. It also embraces
7 the subject of private security, which has become,
8 as you suggested, a complex field.

9 There are about two private security
10 officers for every one public police officer. So
11 it's a very large field. There's a lot of
12 consulting going on, and a lot of the publication
13 going on in terms of the dos and don'ts for security
14 as a subfield of criminology.

15 So I'm a criminologist specialized in, you
16 know, areas such as courts or corrections or law
17 enforcement or private security or a combination of
18 those things.

19 Q Have you ever worked for a university
20 police force?

21 A No, I never have.

22 Q Have you ever had management or
23 supervisory level responsibilities for a police
24 force or on a police force?

25 A No.

1 it safer. A whole lot of things that Jeff [sic]
2 developed that are pertinent to a case like this.

3 And, indeed, CPTED, I will point out -- I
4 think did in the report -- as being adopted by the
5 Centers for Disease Control and just all kinds of
6 professional organizations as -- as the most widely
7 accepted model, I think.

8 Q Okay. And if you were asked or given the
9 task of determining whether or not a security
10 approach or methodology properly complied with
11 CPTED, my assumption is that sort of gather up all
12 the relevant data, you apply your expertise to the
13 data and your knowledge of CPTED, and then that
14 leads you to a particular conclusion; is that fair?

15 A There's a sequence that we use in -- with
16 every case, for example, and the very first one is
17 pretty obvious, and that is the history of a venue.
18 What we do is what's called risk assessment, and
19 that involves looking at, whether it's a large
20 entertainment event or something else you're trying
21 to deal with, what's been going on?

22 I mean, I've had a robbery/shooting at a
23 convenient store we became involved in yesterday in
24 evaluating. The first thing I want to know, I'll
25 tell my statistician or my people, Let's gather the

1 data. I want to see what the history of the place
2 is like? Let's get it for the -- in the case of
3 like the convenience store robbery, let's get CADs,
4 computer-assisted dispatch records, every time they
5 roll a car out there for anything, police car, let's
6 get CADs, let's get Part 1 FBI records for the place
7 and for the contiguous one-mile area around that.
8 So we can take a picture, and our statistician can
9 render that pictorially and we can analyze it and go
10 through it.

11 So square one is --

12 (Videographer's Zoom audio broadcasting a
13 conversation.)

14 A I'm sorry?

15 Q Somebody's talking.

16 THE VIDEOGRAPHER: He's in Palm Beach
17 Gardens.

18 MR. FAZZOLA: Videographer?

19 MR. KING: Mr. Videographer, I think your
20 audio is on.

21 THE VIDEOGRAPHER: My apologies.

22 MR. KING: That's okay.

23 BY MR. KING:

24 Q So Dr. Kirkham, going back to CPTED for a
25 second. And again, you anticipated my next

1 question. My understanding under CPTED is that
2 you -- the first step is a risk assessment, correct?

3 A Correct. Based on things that have
4 happened that are significant and the timeline
5 they've occurred on, that's one of the first things
6 you do.

7 Q Okay. And my assumption is that you do a
8 risk assessment first because you can't design a
9 security system unless you know what you're trying
10 to prevent; is that fair?

11 A Excellent point. You have to what -- to
12 know what type of security measures -- personnel,
13 equipment, other things, procedures -- the type and
14 the amount of security you need, you derive that
15 from an analysis of what you have, how well it's
16 been working or not working.

17 Q Okay. And if you're evaluating whether or
18 not a system complies with CPTED or is adequate
19 under CPTED, my assumption is that the first thing
20 you do is kind of do your own risk assessment and
21 say, What are these people trying to prevent?

22 Is that accurate?

23 A Right, that's a fair statement. What --
24 in this particular venue, whether it's a school or a
25 bank or whatever it is, what are the problems that

1 we now have or might have in the future and what are
2 the reasonably suggested steps by virtue of what we
3 have in the way of professional standards to take to
4 ameliorate the situation.

5 Q Okay. And am I correct when you do a risk
6 assessment, it's not simply a matter of saying how
7 many times were the police called or how many crimes
8 there were, but the type of crime. So in other
9 words, if you've got a venue where there have been
10 100 crimes but 99 of them -- well, strike all that.
11 I'm rambling. Let me start over again.

12 Am I correct that in doing a risk
13 assessment, one of the things you look at is the
14 nature of the prior crimes?

15 A Well, you do look at the nature of it with
16 the caveat that there are -- we normally do a
17 dichotomy, we say crimes against persons, crimes
18 against property, for example. But there are many
19 things that are lesser events that we call
20 precursors and we're concerned about those, too.
21 For example, loitering or prowling and suspicious
22 persons, intoxicated individuals hanging out on a
23 property. I'm going back to my analogy to the
24 convenience store robbery or apartment complex. But
25 a lot of things that are precursors. So we want to

1 a view, are locks up to snuff. They'll go through
2 everything. So that's what I'm comparing it
3 against.

4 Q Okay. And did you do a risk assessment
5 for Wake Forest and The Barn?

6 A No, I didn't conduct any risk assessment
7 as a criminologist. Again, that's the type of work
8 that I don't do. I know very good criminologists
9 that do that. They will come in and do a risk
10 assessment. Again, firms like, I'm sure Lawson
11 Williams, probably do those kind of things. Say,
12 Look, this is what's going on, this is what you've
13 been doing. This is what we recommend that you do
14 to improve things.

15 Q Okay. And did you consult with somebody
16 that specializes in risk assessment for this
17 engagement?

18 A No. Instead, I relied on my background
19 and familiarity with CPTED, with the standard
20 professional literature in terms of what is -- what
21 are the kinds of things that are normally done, what
22 are the problems that are very clear. Sometimes --
23 you know, sometimes there are things that are
24 problematic that you don't see readily.

25 But here, one of the good things about

1 this case is, the issues are very -- are very clear
2 in terms of the kinds of problems. Sometimes
3 things -- something can happen just spontaneously
4 with no warning at all. But there was a history
5 here of problems that needed to be gotten on top of.

6 Q Well -- and I'm a little confused about
7 the degree to which you did a risk assessment. Did
8 you yourself look at the history of problems at The
9 Barn?

10 A Yeah. Maybe if you put it this way, what
11 I'm doing is -- when you say "risk assessment," what
12 I'm doing vicariously as a criminologist, is I'm
13 looking at what the problems were as I can identify
14 them from the record, and the steps that were taken,
15 and were they reasonable or not.

16 Q Okay. So did you look at the history of
17 problems at The Barn?

18 A I did.

19 Q Okay.

20 A And the security measures that were being
21 used in relation to them over a long period of time
22 from -- you know, it was built in a 8,000 square
23 foot structure, built in 2010, and you can look
24 along -- I believe data from '12, '13, '14, '15,
25 '16, '17, '18, the new system going into effect in

1 information if I felt I needed it.

2 BY MR. KING:

3 Q Okay. Are you familiar with IACLEA, the
4 International Association of Campus Law Enforcement
5 Administrators?

6 A No, that is not an organization that I've
7 had contact with.

8 Q Okay. Do you know anything about IACLEA's
9 certification process?

10 A No.

11 Q Do you know what standard a police force
12 has to satisfy in order to be certified under
13 IACLEA?

14 A No. Again, I'm familiar with a lot of the
15 other certification bodies but not IACLEA.

16 Q Do you know if the Wake Forest Police
17 force had been certified by IACLEA?

18 A I do not know what their certification
19 status was.

20 Q Are you familiar with the concept of
21 over-policing?

22 A It's a term that comes up frequently in
23 the context of this case. Yes, I'm familiar with
24 the concept.

25 Q And what is your understanding of what

1 over-policing is?

2 A Well, basically it would be providing more
3 police resources in an area or for an event than
4 were reasonably necessary. A saturation -- a
5 saturation of policing. Usually, that's related to
6 a particular need.

7 You see, this is maybe a good time to make
8 this point. What drives the presence of particular
9 security and police resources is the history of the
10 venue, and that relates not only to numbers of
11 officers but to a lot of other things as well.

12 Q Okay. In your experience as a
13 criminologist, can over-policing have a potentially
14 negative effect on security?

15 A Frankly, in a half century, over-policing
16 is not something that I've had occasion to deal with
17 that I can recall at all, really, over the years.

18 I'm reminded that -- Dr. Martin Luther
19 King said that his greatest complaint about the
20 police was not excessive force or police brutality,
21 it was under-policing. "Under-policing."

22 Under-policing is a very relevant term.
23 Over-policing, not really.

24 Q Well, are you familiar with situations in
25 which having more armed police officers in a

1 predominantly African-American event can actually
2 make security and behavior worse?

3 A No, I would not agree with that either, as
4 a criminologist or as a former officer who worked a
5 high crime, inner city, all black project. I would
6 agree that -- as Lawson Williams pointed out -- that
7 there can be a perception, a misperception of
8 prejudice or discriminatory behavior because of
9 numbers of police there.

10 When that kind of thing happens, it's
11 time to -- as we did in my department, to do some
12 walking and talking, have regular meetings, and make
13 people -- or in this case the students -- aware
14 that, Look, we're not -- we're not trying to
15 hard-time you or disrupt your events or anything.
16 We're trying to keep you safe.

17 And to not do that -- to not deploy the
18 appropriately indicated resources would be -- and I
19 know there's no intent of racism in this case, but
20 it would de facto have exactly that effect; you'd be
21 denying -- you'd be denying young people, who in
22 this case were predominantly black, equal protection
23 of the law and security that was available
24 throughout the campus.

25 So you really -- you may have a PR problem

1 if people believe they're being over-policed. You
2 have to explain, Look, this is -- this is why we're
3 doing this because we have very large capacity
4 crowds. We got all kinds of problems associated
5 with those, have for a long time, and these are
6 public events. These are not like going through an
7 airport terminal. There are certain things you have
8 to expect. It's not a private location like going
9 into a bathroom stall or something.

10 So you really can't take that approach. I
11 know that was done here, and I think it was a gross
12 mistake.

13 Q Let me back up to a general issue. And
14 this may seem obvious, but I want to ask it anyway.
15 Am I correct the accuracy of your opinions depends
16 upon the accuracy and completeness of the data you
17 received and the accuracy and completeness of your
18 analysis?

19 A Right. The totality of things that I
20 reviewed in connection with this case against the
21 backdrop of my familiarity with relevant
22 professional standards and procedures, that's
23 correct.

24 Q And I think expert testimony, in my
25 simple-minded way, is sort of like baking a cake.

1 Q Well, but you don't know what data exists
2 as to what happened at every Barn party, do you?

3 MR. FAZZOLA: Object to form.

4 A I'm sorry?

5 BY MR. KING:

6 Q You don't know the universe of data that
7 exists for every Barn party, do you?

8 MR. FAZZOLA: Objection.

9 A No. Again, you know, I didn't feel it was
10 necessary to -- I think I had enough predicate for
11 the opinions I expressed.

12 BY MR. KING:

13 Q So let me go back to my question. I'm
14 going to read it from the transcript here: Do you
15 know whether behavior, misbehavior, or criminality
16 got better or worse after the hybrid approach was
17 instituted? Do you know the answer to that
18 question?

19 MR. FAZZOLA: Object to form.

20 A Yeah, I'm not -- I'm not certain. I can
21 try to mathematize it as far as what things remain
22 static, what things got worse, because in my view,
23 it was an ongoing, dangerous circumstance.

24 BY MR. KING:

25 Q So to make sure I understand, my question

1 is: Do you know whether behavior, misbehavior, or
2 criminality got better or worse after the hybrid
3 approach was instituted?

4 Am I correct that your answer is, no, you
5 do not know?

6 A I don't know quantitatively, no. I
7 haven't tried to quantitate it.

8 MR. KING: Okay. Let's take five minutes.

9 THE WITNESS: Okay.

10 THE VIDEOGRAPHER: The time is
11 approximately 12:23 p.m. We're now off the
12 record.

13 (A recess was taken from 12:23 p.m. to
14 12:33 p.m.)

15 THE VIDEOGRAPHER: The time is
16 approximately 12:33:50 p.m. We're now on the
17 record.

18 BY MR. KING:

19 Q Dr. Kirkham, am I correct that in
20 analyzing the adequacy of a security approach, you
21 have to look at all the different components of the
22 security approach, so you have to consider how many
23 police officers there are, where they're stationed,
24 their training, nonpolice security, training for
25 nonpolice security, training for nonsecurity

1 determination what you should do.

2 Q You don't know whether the hybrid approach
3 made behavior better or worse, do you?

4 MR. FAZZOLA: Object to form.

5 A I don't personally know what the impact in
6 any given situation was of the hybrid approach. I
7 know that the fights continued, the problems
8 continued, which is what I would expect.

9 I'm remembering in 2016, they had -- and
10 this is kind of a common thing that occurred after
11 the -- Dr. Goldstein's changes, they had a series of
12 fights, and there was a meeting. I remember
13 Mr. Hickman saying, It's crazy to have 500-plus
14 people in an event like that with so few -- six
15 security and one police officer sitting outside in a
16 car. And I would certainly agree with that.

17 So there are some structural problems here
18 that are difficult for me to understand why they
19 were doing -- and why they didn't do certain things.

20 BY MR. KING:

21 Q Okay. Let me go back to my question.
22 Given the fact that you have not reviewed the data
23 for every event before and after the hybrid approach
24 was implemented, am I correct in understanding that
25 you do not know whether the hybrid approach made

1 behavior better or worse?

2 MR. FAZZOLA: Object to form.

3 A No. I have not conducted that kind of
4 microscopic evaluation to determine if individual
5 behavior, as best we can measure it, was better or
6 worse because of the structural dangers, that what
7 existed both before and after were posing.

8 BY MR. KING:

9 Q And you didn't request additional data so
10 you could determine whether or not the hybrid
11 approach made things better or worse, did you?

12 A I did not. And one of the reasons I did
13 not was that I didn't believe that -- until and
14 unless you eliminated some foreseeably dangerous
15 conditions -- and we both alluded to some of them as
16 we talked along here today -- until you did that,
17 the dangers were going to remain. You know, and so
18 that's why I did not dive deeper into
19 particularities of the property.

20 Q Given the fact that you need to look at
21 the totality of the circumstances to judge a
22 particular security system, am I correct that when
23 you're comparing two security systems, it's more
24 than a matter of simply counting how many police
25 officers were there?

1 and do bag checks.

2 Q And again, we're going to look at all of
3 that. My question is: What evidence are you aware
4 of that there was actually a gun, an unauthorized
5 gun in The Barn?

6 And you have mentioned Ms. Johnson's
7 testimony, which I don't think you quite have right,
8 but it will speak for itself. Are you aware of any
9 evidence other than what her -- what she testified
10 to?

11 A Just as I've said that his -- the fact
12 that there was nothing to prevent him from taking a
13 gun inside, and that he does reach into his
14 waistband strangely.

15 Q Did you see him touching a gun?

16 A No, you don't see any gun there, but as a
17 police officer, when I see someone, you know,
18 reaching into -- depending on the context, reaching
19 into their waistband, I get a little nervous, or
20 used to.

21 Q Does policing and security at a campus
22 present a different set of challenges than any other
23 locations?

24 A In different locations assuredly, yeah.
25 And this goes back to your very good question about

1 the venue.

2 Q And I want to make sure that we are on the
3 same page. My question was: Does policing and
4 security -- I'm sorry. Does policing and security
5 at a campus, a college campus present other
6 challenges and issues than you have at other
7 locations?

8 A Of course.

9 Q I was gratified to see you cite the
10 assassination attempt on President Reagan as an
11 example of crimes that are difficult or impossible
12 to prevent, because that's the example I've been
13 using from the beginning. And so this may be a
14 softball question, but am I correct in understanding
15 that you cannot stop every random act of violence?

16 A Your point's well taken. You cannot stop
17 every random act of violence; however, what you sure
18 can do is do everything you can to dissuade most
19 potential perpetrators of violence.

20 Now, with respect to President Reagan,
21 you'll note in my report I said that there are
22 certain individuals who are involved in expressive
23 violence that are in such a state of mental illness,
24 rage that they -- that even the Secret Service and
25 DC Police all over the place were not going to stop

1 BY MR. KING:

2 Q I apologize if this is repetitive, but did
3 you do your own risk assessment as part of your
4 engagement in this matter?

5 A No, I did not do a formal risk assessment,
6 and you won't see that reflected in my -- I'm
7 suggesting to you that a basic risk assessment would
8 flag immediately on certain, well-known hazards.
9 There are a bunch of hazards in -- from square one
10 on; some of them existed -- a number of them existed
11 well before Mr. Goldstein, Dr. Goldstein arrived on
12 campus, and they were exacerbated after he put this
13 system in effect.

14 Q I believe you said you did not do a formal
15 risk assessment. Did you do a risk assessment of
16 any sort?

17 MR. FAZZOLA: Object to form.

18 A No. I have said that a risk assessment
19 should have been done. I have -- what I have done
20 is to attempt to identify what were foreseeable
21 hazards, things that pose obvious hazards to this
22 specific venue: Overcrowded, large numbers of young
23 people, alcohol coming in, no ability to control the
24 entrée of people in there, minimal presence of
25 police.

1 I've attempted to identify the variables,
2 and I've done that in my report, I think, pretty
3 exhaustively, that were hazardous, that were
4 dangerous.

5 BY MR. KING:

6 Q Okay. My question was: Did you do a risk
7 assessment of any sort?

8 A Implicitly -- I don't want to be -- I'm
9 not trying to be evasive. Implicitly what I did was
10 a hazard or risk assessment. These are all
11 dangerous variables that need to be corrected. So
12 that's kind of what you do in a risk assessment.
13 You may -- a CPTED, crime prevention officer, may
14 have a checklist to go and check one, two, three,
15 four, I haven't done that, but I've done what's
16 tantamount to the same thing.

17 Q Was there anything that would have
18 prevented you from doing an actual risk assessment?

19 A Well, that would be something that someone
20 who was -- who has been retained by them to come in,
21 like the firm they were working with, Developmental
22 Associates or another firm that can do -- that does
23 police consulting, they would do something like
24 that. I don't do that type of work. Everything I
25 do is litigation-related.

1 either the first system or the second system.

2 BY MR. KING:

3 Q Okay. Do you think you were better
4 situated to assist the risks present at The Barn
5 than the Winston-Salem Police were?

6 A I believe that I was in terms of the
7 totality of the circumstances.

8 Q In the history of The Barn, had a weapon
9 ever been used prior to the shooting of Mr. Baker?

10 A No weapon had ever been used. There are
11 situations where officers were apprehensive about
12 weapons. I remember one particularly, Officer
13 Gravely saw after one of these fights, many fights,
14 saw people rushing toward the door and he said in
15 his deposition "I was worried that there might be a
16 gun."

17 There is an allegation of a student that
18 says that they had a gun pointed at them somewhere
19 in the record.

20 The point of it is, this all goes back to
21 wanding and use of a magnetometer. The screening
22 for -- you don't want weapons coming in there.

23 Q My question was: In the history of The
24 Barn, had a weapon ever been used prior to the
25 shooting of Mr. Baker?

1 A Not to my knowledge. This is the first
2 shooting.

3 Q In the 75 years that Wake Forest
4 University has been in Winston-Salem, has there ever
5 been a homicide on campus before the shooting of
6 Mr. Baker?

7 A This is the first homicide to my
8 knowledge.

9 Q In the 75 years Wake Forest University has
10 been in Winston-Salem, had a gun ever been used in
11 the commission of a crime on the Wake Forest campus?

12 A I'm not aware of any such occurrence.

13 Q And how far is -- well, you've never been
14 on the Wake Forest campus, correct?

15 A No, I have not.

16 Q Do you know -- I'm sorry. If you were
17 doing a risk assessment, is one of the things you
18 want to do is understand the physical environment in
19 which the venue is located?

20 A The type of evaluations I do as a
21 criminologist, it's -- there are -- sometimes there
22 are -- there are spacial aspects and physical
23 aspects of a location that one of us will -- I will
24 go or I will send Mr. Gregg in to do a -- you know,
25 take photography and do very detailed information.

1 I did not feel the need to do that in this case.

2 Q How far is The Barn from university police
3 headquarters?

4 A I can only say that, by the testimony of,
5 I think, Gravely, said "We can be there -- one of
6 our officers can be there in two minutes." I don't
7 know. There were three officers on patrol. I
8 couldn't -- I can't tell you, nor would I be
9 concerned with the spacial realities of where the
10 police department is in relation To the Barn.

11 Q The question is: Do you know how far The
12 Barn is away from the university police
13 headquarters?

14 A No.

15 Q Do you know how far away university police
16 officers were at the time of the shooting?

17 A I don't know. There were three officers
18 on patrol. We know about Bottoms and Felts who
19 summoned there. I don't know -- of other officers
20 that were out there, I don't know what their
21 positions were, no.

22 Q Do you know how long it took the
23 Winston-Salem Police to respond to the shooting?

24 A Again, I don't recall that. I also
25 don't -- I know that there were no officers as had

1 cross-checking, when people would present themselves
2 at the gate, to come in. We know from -- again,
3 this is the veracity of the deponent, Mr. Wille,
4 Lucas Wille says that they -- half the people didn't
5 have any student ID, but they let them in any way
6 because there were -- you'd have like 300 people
7 piled up out there.

8 I mean, also -- and this is another, you
9 know, nail in the coffin figuratively, Dr. Penny
10 Rue, the vice president says, Gee, you know, there
11 are a lot of fights at campus events, and we would
12 sometimes -- we would double our venue. If students
13 in there liked what they saw, they'd get on social
14 media, start texting and emailing, and we'd have
15 twice as many people in an hour. That's not very
16 safe, and there's no control of that. There's just
17 a break-down of access control.

18 Q Okay. I'm asking a very narrow issue, and
19 that's about keeping people off campus without
20 showing an ID. Did Wake Forest have a duty to keep
21 people off campus unless they showed an ID?

22 MR. FAZZOLA: Objection.

23 A I'm not -- I'm not in a position to say.
24 There may be other events going on on campus that
25 people want to come on campus to look it over,

1 that's a totally different subject. I'm not
2 suggesting that people should not be allowed on the
3 campus. We're talking about -- I thought we were
4 talking about the events surrounding this particular
5 venue and this event.

6 BY MR. KING:

7 Q Well, let me ask the question again so
8 that we're on the same page: Is it your opinion
9 that Wake Forest had a duty to keep people off
10 campus unless the person showed an ID?

11 MR. FAZZOLA: Object to form.

12 A No, I think people should be able to come
13 on the campus, most any campus, with the exception
14 of restricted areas, sure.

15 BY MR. KING:

16 Q Are you aware of any campus that seals off
17 the campus and only allows people to enter if they
18 show an ID?

19 A No, I'm not aware of any campus. I'm
20 aware of the fact that Wake Forest, and probably
21 lots of other campuses follow the same thing, when
22 it gets to be nighttime, people coming to campus for
23 events late at night, that they ramp up their ID
24 requirement.

25 Q And we're going to talk about the ID

1 practices. Right now I'm trying to understand what
2 you consider Wake Forest duty to be. So am I
3 correct that you do not believe Wake Forest had a
4 duty to keep people off campus unless they showed an
5 ID?

6 MR. FAZZOLA: Objection.

7 A Generally speaking, no. People should be
8 able to come on campus. If I'm up there in the
9 area, I might want to go in there and look at the
10 campus. I mean, you know, you shouldn't try to
11 treat it as a fortress. It's very different than
12 certain events.

13 BY MR. KING:

14 Q Wake Forest was not required to keep
15 people off campus without an ID, correct?

16 A I don't believe so.

17 MR. FAZZOLA: Object to form.

18 BY MR. KING:

19 Q I think you mentioned that Wake Forest had
20 a policy, I think you said they had a written policy
21 in your report. You say that they had a formal
22 policy about showing IDs at the gate. Is that your
23 understanding?

24 A That was -- that was one of the policies
25 they had was to -- the gate was one of the means of

1 MR. FAZZOLA: Objection.

2 A They got little ID tags, I believe.

3 BY MR. KING:

4 Q Okay. Describe for me the fencing that is
5 around the Wake Forest campus.

6 A I could not give you a description of the
7 fencing around the Wake Forest campus.

8 Q Is it your testimony that Wake Forest had
9 an obligation to encase the campus in fencing in
10 order to control who entered the campus?

11 MR. FAZZOLA: Objection to form.

12 A Now I'm trying to recall some specifics
13 from the record about -- I know they had problems
14 with people cutting through woods and getting on to
15 the campus through other means, and I don't know
16 what those were. I will tell you that perimeter
17 control is -- access control are very important
18 principles of crime prevention through environmental
19 designs, CPTED, and you should -- you should -- you
20 know, we're not talking about a strip shopping
21 center here or a mall. You should seek to control
22 ingress through fences, through perimeter control
23 where you can.

24 BY MR. KING:

25 Q Okay. So again, my question is: Is it

1 your testimony that Wake Forest had an obligation to
2 encase the campus in fencing to control who entered
3 the campus?

4 My understanding is that you're saying
5 yes?

6 A Yes. They should have a reasonably secure
7 perimeter where they may do that with vigilance or
8 they may do that with cameras. There may be areas
9 that are open but still under surveillance. That's
10 really up to them.

11 And I'm not here as an expert on the Wake
12 Forest campus and its idiosyncratic layout.

13 Q Can you walk on to the FSU campus?

14 A Pardon me?

15 Q Can you walk on to the Florida State
16 campus?

17 A You can.

18 Q Can you walk on to Duke University's
19 campus at 10:00 p.m. at night?

20 A At 10:00 o'clock at night, again, I've
21 been gone from any campus for many, many years, I
22 don't know what the ingress control is at night,
23 what points -- and what are -- what are volatile
24 concerns. Have they had attacks of women walking to
25 and from places on the campus at night? Have they

1 the need for it.

2 BY MR. KING:

3 Q Are criminal records, including pending
4 charges, public records in Florida?

5 A What about records in Florida?

6 Q Are criminal records, including pending
7 charges, public records in Florida?

8 A Yes. Under our Florida Sunshine Law, yes,
9 I believe those are accessible except for juveniles.

10 Q Are criminal records, including pending
11 charges, public record in North Carolina?

12 MR. FAZZOLA: Objection to form.

13 A I can't speak to North Carolina law.

14 BY MR. KING:

15 Q Did Wake Forest have a duty to do a
16 criminal background check on every person who wanted
17 to come on campus?

18 A No, that would obviously be onerous and
19 burdensome and beyond the pale of anything that's
20 reasonable. I think the standard is what are
21 reasonable campus administration would do or would
22 not do.

23 Q You've never been in campus security or
24 campus administration, correct?

25 A That's correct.

1 MR. FAZZOLA: Objection.

2 BY MR. KING:

3 Q Okay. Do you know of any college that
4 requires criminal background checks before people
5 enter campus?

6 A To walk on the campus, no.

7 Q How about to drive on campus?

8 A To drive on campus, no.

9 Q You're aware, I assume that there are
10 private residences that can only be accessed through
11 the Wake Forest campus gates?

12 A I'm not familiar with layout out of
13 private residences and the gates. Again, I've tried
14 to make that clear. I do not understand -- I've
15 never been to Wake Forest campus. My -- I'm looking
16 at it really with a -- metaphorically with a rifle
17 rather than a shotgun or a very narrow focus.

18 Q Well, did you at least request a map of
19 the Wake Forest campus as part of your undertaking
20 in this case?

21 A I've seen diagrams of the relevant
22 portions of it. The road, for example, the parking
23 lots that were adjacent to where the incident
24 occurred or close to it, where The Barn is located.
25 I've seen some -- yeah, I've seen some Google Earth,

1 that kind of thing, but I'm satisfied I've seen
2 enough on that. I don't need any more
3 particularity.

4 Q Did Wake Forest have a duty to prevent
5 people from entering campus who were visiting the
6 private residences unless the guests had IDs?

7 MR. FAZZOLA: Objection.

8 A No. I mean, people -- if there are
9 private residences that can only be accessed through
10 the campus, I would defer to whatever system they
11 choose to use.

12 BY MR. KING:

13 Q Is it your opinion that Wake Forest had a
14 duty to, on the evening of January 19, 2018, bar
15 people from campus who were intoxicated?

16 MR. FAZZOLA: Objection.

17 A I think to the extent that officers were
18 able to determine -- again, I'm drawing this
19 specifically to the point of people -- attendees at
20 an event like The Barn, yes, to keep -- they did
21 have an affirmative duty to keep obviously impaired
22 people off the campus, and I would point out police
23 have special training for the recognition of the
24 indicia of intoxication that lay people, including
25 students assigned to duties, would not know.

1 BY MR. KING:

2 Q Am I correct that one of your criticisms
3 of Wake Forest is inadequate lighting at The Barn
4 and around The Barn?

5 A Yes.

6 Q I think you mentioned before that there is
7 a standard that's applied, and I'm afraid I may have
8 cut you off, and I apologize.

9 A I was using the highly respected or
10 authoritative source of the Engineering Illumination
11 [sic] Society of North America. They promulgate the
12 standards of luminance, and they boil down to so
13 many candlepower, source candlepower for different
14 locations. But the long and short of it is, I ought
15 to be able to pretty well read a newspaper or a
16 business card most places on a campus, which you
17 look for, and there's a lot of this inhibitor -- or
18 dark spots of which there are many from the material
19 I've seen on this campus.

20 And there are recurrent complaints from
21 people like the sheriff of the county, and other
22 officers who have talked about darkness -- darkness
23 inside and outside and, those are really bad
24 elements.

25 Q What is the recognized standard for

1 illumination inside a place like Barn?

2 A I couldn't tell you without recourse to
3 the -- some of the manual data on it. There are
4 different for open parking lots, sidewalks,
5 residences. But the idea is you're supposed to
6 see -- X number of feet, you're supposed to be able
7 to recognize facial recognition at a certain
8 distance.

9 But suffice to say that -- I mean, I
10 looked, for example, at the video, the interior
11 Barn. Way -- way too dark. I mean, you can't --
12 there's no way, even if you had officers well
13 trained, properly posted inside there or you had
14 camera operations, you wouldn't be able to see much
15 of anything.

16 Q I'm going to ask you the question again:
17 What is a recognized standard for illumination for a
18 place inside The Barn?

19 A I can't tell you what the specific -- and
20 there will be a -- Durham County or whatever it is,
21 there will be a county ordinance as far as luminance
22 at different locations. I couldn't tell you what
23 those are.

24 Q And did you bother to look at what the
25 standard was for The Barn?

1 A No, I did not.

2 Q Did you bother to look at whether or not
3 there were any local regulations or ordinances about
4 lighting in a place like The Barn?

5 MR. FAZZOLA: Objection.

6 A No. Again, I'm not a luminance expert.
7 I've not done that, I don't do illumination tests.
8 I work with people that do that type of thing, but I
9 didn't see a need to do anything like that or hire
10 anybody to do anything like that.

11 BY MR. KING:

12 Q What is the recognized standard for
13 illumination on the roadway to The Barn?

14 MR. FAZZOLA: Form.

15 A I couldn't tell you what that is either.
16 That's a technical question beyond the ambit of my
17 expertise.

18 BY MR. KING:

19 Q Well, according to your material, you have
20 access to -- I'm going to quote here -- crime
21 prevention/private security specialist, conduct
22 lighting measurements with calibrated instruments
23 and to diagram the spacial distribution of
24 illumination.

25 Does that sound familiar?

1 A Yes. I've used those type of individuals
2 frequently and sometimes at large event activities
3 where parking lots and roadways were dark.

4 Q Did you use one in this situation?

5 A No, I did not. I did not feel the need to
6 do it in this case.

7 Q And I heard you reference Sheriff
8 Birkhead's comments about inadequate lighting, do
9 you recall that?

10 A I do. He commented lighting was
11 inadequate inside and outside.

12 Q And that was in the spring of 2014,
13 correct?

14 A Right.

15 Q Do you know what the actual level of
16 lighting was in The Barn on January 19th and 20th,
17 2018?

18 A Only from -- I couldn't give you a
19 technical luminance number. I don't know what it
20 would be. But I could tell you it was from a
21 security standpoint it was way too dark. And there
22 are recurrent statements in the record about how
23 they would -- they would say, Hey, you know, you got
24 to turn the lights up. Are they'd turn it up, and
25 they'd turn it back down again, so it was constantly

1 self defeating.

2 Q Do you know what the actual level of
3 lighting was outside The Barn on January 19th and
4 20th, 2018?

5 MR. FAZZOLA: Objection.

6 A No, I don't know the technical candlepower
7 that was out there at that time, except to the eye
8 it was very, very dark.

9 BY MR. KING:

10 Q And you were doing -- and you were judging
11 that based upon what you saw in the video; is that
12 correct?

13 A Videos, yes, material I've seen. It's
14 just -- there was a lot of pockets of darkness that
15 would be conducive to criminal events, not just
16 violent crime but vehicle breaking and enterings,
17 any number -- purse snatches, any much of things.

18 Q Do you know how watching a video or the
19 way a video is recorded affects the perceived
20 darkness of the image, do you have expertise in
21 that?

22 MR. FAZZOLA: Objection to form.

23 A No. Again, I know there can be a
24 differential from what is seen by the eye and what
25 the camera captures in the photography or

1 videography. But no, it's beyond the area of my
2 expertise.

3 BY MR. KING:

4 Q Okay. But you have access to someone who
5 it is their expertise, right?

6 A I have access to people I can and do hire
7 to conduct luminance evaluations of property.

8 Q Did you ever say to plaintiff's counsel, I
9 want to go on to the Wake Forest campus and see The
10 Barn for myself?

11 MR. FAZZOLA: Objection to form.

12 A No. I will do site visitations or send my
13 chief assistant, who's also a private investigator,
14 a licensed private investigator to do such things if
15 I see it's necessary. But with modern photography
16 and videography and all the other material you have,
17 it very often -- sometimes it is, but not in this
18 case.

19 BY MR. KING:

20 Q Well, do you have the expertise to judge
21 the adequacy of lighting by looking at a video?

22 A I could look at the -- I can look at the
23 video and get an idea of what -- I look at lots of
24 videos of bar events, for example, where it's too
25 dark. You couldn't see. If you had police

1 personnel or security people, you couldn't see
2 what's going on.

3 Q Do you have the expertise to judge the
4 adequacy of the lighting if the Barn by looking at
5 the videos?

6 MR. FAZZOLA: Object to form.

7 A Other than to say as a criminologist, that
8 it is -- it's too dark. Now, I couldn't break it
9 for you into technical lumen standards.

10 BY MR. KING:

11 Q Well, you could have if you sent your
12 person on campus, couldn't you?

13 MR. FAZZOLA: Objection.

14 A I could have -- I could have suggested
15 that they hire someone to conduct a lighting
16 evaluation. You'd have to know, you know, what
17 subsequent remedial measures had been taken since
18 the night of the 19th and the 20th to know, you
19 know, what you're looking at now in relation to what
20 you were looking at then, inside and outside.

21 BY MR. KING:

22 Q Well, we'll come back to that in just a
23 minute.

24 Was there anything that prevented you from
25 retaining a person who actually has expertise in

1 lighting to do an evaluation of the lighting at The
2 Barn?

3 A No.

4 Q Now, we talked before about the fact that
5 Sheriff Birkhead's comments about the lighting were
6 in spring of 2014, correct?

7 A Right. And other officials, other police
8 officials had made similar comments about the
9 lighting.

10 Q I don't mean to be rude. I'm happy to be
11 here all weekend. My question right now is about
12 Sheriff Birkhead; that was the spring of 2014,
13 correct?

14 A Right. He made a comment.

15 Q Okay. Do you know what measures were
16 taken subsequent to that to address his concerns
17 about lighting?

18 A I do not.

19 Q Did you ask plaintiff's counsel to find
20 out what changes were made to the lighting?

21 MR. FAZZOLA: Objection.

22 A No, because I had seen reiteration of the
23 same concerns at different points in the record
24 after Sheriff Birkhead said there were concerns
25 about lighting expressed by other people.

1 BY MR. KING:

2 Q Was there anything that prevented you from
3 taking 30 seconds to send an email to Mr. Fazzola to
4 say, Please ask them for documents about the changes
5 in lighting at The Barn?

6 MR. FAZZOLA: Objection.

7 A Nothing prevented me from doing that. I
8 would have done it if it felt it was necessary.

9 BY MR. KING:

10 Q But you didn't feel it was necessary
11 because you felt like you've got the expertise to
12 judge the adequacy of the lighting by looking at
13 videos; is that correct?

14 MR. FAZZOLA: Objection.

15 A Not just in this case, but I have looked
16 at hundreds and hundreds of videos of different
17 structures, and I have a -- as a criminologist and a
18 former police officer, I have -- I know what dark
19 is.

20 BY MR. KING:

21 Q Okay. Again, I'm talking about this case,
22 you didn't feel it was necessary to request more
23 information about remedial measures regarding
24 lighting because you felt like you had the expertise
25 to judge the adequacy of the lighting by looking

1 only at videos; is that correct?

2 MR. FAZZOLA: Objection.

3 A That's correct.

4 BY MR. KING:

5 Q Okay. Do you know what the Engineering
6 Illumination Society of North America's standard was
7 for the area in which Najee Baker was shot?

8 A No, you'd have to measure it and juxtapose
9 it with the Illuminating Engineering Society of
10 North America's standards.

11 Q And again, that's not something you
12 requested, correct?

13 A That's correct.

14 Q Is it your opinion that the police
15 officers assigned to The Barn for the party were not
16 adequately trained?

17 A Yes.

18 Q Are you familiar with all of the training
19 the Wake Forest police officers received?

20 MR. FAZZOLA: Objection.

21 A Not all the training, but I derived the
22 understanding that they did not receive training in
23 crisis intervention, conflict management, body
24 language, all these things that I referred to in my
25 report. I've seen nothing to indicate that they had

1 received that kind of training.

2 BY MR. KING:

3 Q Okay. Well, did you say to plaintiff's
4 counsel, Mr. Fazzola, will you please ask the
5 university to provide the training that was given to
6 each of the police officers?

7 MR. FAZZOLA: Objection.

8 A No, I did not request individual training
9 records for police officers, but I am operating on
10 the assumption that there was not conflict
11 management training. I'm a former crisis
12 intervention officer in the police department.

13 BY MR. KING:

14 Q Was there anything that prevented you from
15 taking 30 seconds to send an email to Mr. Fazzola or
16 Mr. Fierberg and say, Please request the training
17 records for all the university police officers?

18 MR. FAZZOLA: Objection.

19 A No, I could have requested it.

20 BY MR. KING:

21 Q Is it your opinion that Wake Forest had a
22 duty to employ metal detectors at The Barn on the
23 night of the shooting?

24 MR. FAZZOLA: Objection.

25 A Yes, under the circumstances.

1 A I think I mentioned that Sergeant Gravely
2 on one occasion has expressed concern about an event
3 where people were running out and thought somebody
4 might have a firearm.

5 Q But to your knowledge, there's no evidence
6 of there -- in the history of The Barn was ever an
7 authorized firearm; is that correct?

8 MR. FAZZOLA: Objection.

9 A They had -- they had no history of
10 locating firearms; however, I note that there are
11 other universities that do use -- in the survey of
12 ten universities that was conducted, that do use
13 wanding, as well as bag checks, to deal with
14 foreseeable problems like people bringing in
15 alcohol, which they were doing as well.

16 BY MR. KING:

17 Q Okay. Did you yourself do a survey of
18 whether universities use metal detectors or wands
19 for large events?

20 A I didn't do a survey, but I noted the
21 survey of other universities in this case, a number
22 which did use -- some did and some didn't, but some
23 had metal detectors.

24 Q Okay. And trust me, we're going to come
25 to that. My question is: Did you independently

1 conduct any research to determine whether colleges
2 and universities used metal detectors and under what
3 circumstances?

4 A No, I have not. I have not investigated.

5 Q Is it your opinion that Wake Forest had a
6 duty to search every vehicle that entered campus to
7 look for weapons?

8 A No. That would be improper. I'm sure it
9 would be a Fourth Amendment violation to try to do
10 something like that, and it's not appropriate police
11 conduct. It's very different than requiring a
12 student ID for everybody in the vehicle coming in as
13 a condition of being able to come on the campus late
14 at night.

15 Q So I want to go back to the metal detector
16 issue. I understand that you're relying in part
17 upon the survey of ten colleges and universities.
18 Are you relying on anything other than that in
19 expressing the opinion that Wake Forest had a duty
20 to use metal detectors at The Barn?

21 MR. FAZZOLA: Objection.

22 A Not other than amplifying the context that
23 we're talking about; a very large venue with a
24 history of fights -- major fights and troubled
25 events, having to call for police backup repeatedly.

1 little airline bottles and knocking them back, you
2 deal with that.

3 Q Are you aware of any evidence that anybody
4 brought alcohol into The Barn on the night of the
5 shooting?

6 MR. FAZZOLA: Objection.

7 A That -- I have no specific evidence of it
8 happening on that night. Again, it's something
9 that's happened many times before.

10 BY MR. KING:

11 Q Does FSU conduct bag searches for large
12 events to look for alcohol?

13 A I'm sorry?

14 Q Does FSU do bag checks to look for alcohol
15 at large events?

16 A I've been gone from the university as a
17 faculty member since 1991. I have no idea what
18 they're doing right now.

19 Q Do you have any idea what any colleges and
20 universities are doing regarding bag checks for
21 alcohol?

22 A No, not beyond the ten universities that
23 were surveyed in connection with this matter.

24 Q Okay. And when you say "surveyed," not
25 surveyed by you, surveyed by somebody at Wake

1 Forest, correct?

2 A That's correct.

3 Q Okay. And my understanding is you did
4 nothing to confirm that survey information, correct?

5 MR. FAZZOLA: Objection.

6 A That's correct. And I would point out
7 it's a good thing that they did reach out to other
8 universities and try to find out what they were
9 doing, with staffing and other things.

10 BY MR. KING:

11 Q Did Wake Forest have a duty to arrest
12 anyone who was involved in a fight at The Barn?

13 A This is an important point. They had a
14 duty to act affirmatively if it was -- as a police
15 officer, I'm sure the law is the same up there in
16 North Carolina as it is here in Florida, most
17 states, if you witness a misdemeanor committed, a
18 simple assault, for example, committed and you can
19 make an arrest, you have a duty -- you have a duty
20 to either make an arrest or physically remove the
21 person from the premises in this case and escort
22 them off the campus. There should have been a
23 policy. I don't think there was a policy. There
24 should have been a policy to walk the person out,
25 police officer take -- remember, we only got one

1 officer working out front and others have to be
2 summoned. But to take that person out. And tempers
3 often run high in these situations, and tell them,
4 get a trespass warning, however that's done
5 mechanically in -- on campus in North Carolina, have
6 them issue a trespass warning. If they come back
7 within 30 days, 60 days, whatever it may be or they
8 come back that night, they're subject to arrest.
9 Walk them out to their car, see them leave off the
10 campus.

11 Q Can you name the colleges that have that
12 policy?

13 A I have no idea. We have thousands of
14 colleges. I have no idea.

15 Q Can you name one that has that policy?

16 MR. FAZZOLA: Objection.

17 A No, I cannot.

18 BY MR. KING:

19 Q Did you make any effort to determine
20 whether any university or college has this policy
21 that you said Wake Forest had a duty to have?

22 A No. And I did -- maybe -- given the
23 tentative question, it may be a good time to mention
24 that, what I'm focused on here is if Wake Forest
25 were the only college in the United States of

1 America, we had no exemplars to compare it to, how
2 reasonable were the things that they were doing in
3 terms of given what they knew there in terms of the
4 problems they had. It's not -- any more than it's a
5 basis to say, Well, these automobile manufacturers
6 have defective brakes or whatever as compared with
7 what our brakes are like. We're looking
8 specifically at those standards, other standards
9 relate to it from the field generally. We're not
10 trying to go far afield to talk about other
11 colleges.

12 Q Are you saying that what other colleges
13 and universities do in their event management is
14 irrelevant to the reasonableness of what Wake Forest
15 did?

16 MR. FAZZOLA: Objection.

17 A Not at all. There are things -- I
18 commended Wake Forest University for reaching out
19 and trying to find out what other colleges were
20 doing. Do they wand, do they bag check, do they --
21 how many officers do they use on duty. Those are
22 things that are fine to do, but I don't think
23 there's necessarily anything to do beyond that.

24 BY MR. KING:

25 Q So am I correct in understanding you

1 believe that it is relevant in judging the
2 reasonableness of Wake Forest's event management and
3 security to look at what other universities do?

4 A It is relevant to get guidance in terms of
5 what other schools are doing.

6 Q And did you do that?

7 A Huh?

8 Q Did you do that?

9 A I didn't do that, no. But they did.

10 Q Well, again, we're going to talk about
11 that in just a minute. My question at this point
12 is, my understanding is that you think in judging
13 what Wake Forest did, is relevant to look at what
14 other universities did. I'm trying to understand
15 why you made no effort to find out what other
16 colleges and universities were doing in terms of
17 security and event management?

18 A I didn't view it as necessary. I believe
19 that what was necessary and was indicated would be
20 to -- given what they knew, with system one, what we
21 call system one and system two, would be to hire
22 some consultants on the sort they had on with
23 Developmental Associates to do an exhaustive
24 evaluation of what are the problems and what do we
25 need concretely: How many officers, how many

1 cameras, where placed, what about lighting, mercury
2 vapor, sodium vapor, where placed. All those things
3 a consulting group would have done. They're all
4 over the place. Very competent, these are two
5 chiefs of police, and Developmental Associates could
6 have been of assistance or any number of others.

7 Q Why didn't you make any effort to find out
8 what other colleges and universities were doing in
9 terms of event management and security?

10 A With all due respect, counsel, I tried to
11 answer that question. I said I focused on
12 this particular -- I'm looking at this particular
13 university against the backdrop of CPTED procedures
14 commonly used crime prevention deterrent measures.
15 That's the method that I'm using.

16 Q But you don't know what CPTED policies and
17 procedures are used at universities, do you?

18 MR. FAZZOLA: Objection.

19 A CPTED policies and procedures are widely
20 used at universities on things like access control,
21 presence of authoritative figures, police
22 specifically to deter events, lighting, all those
23 things, and there are school references in the CPTED
24 material on that.

25 But I mean, how many -- rhetorically, how

1 many colleges would you want me to survey? Ten,
2 100? A thousand? I mean, I think we're way afield
3 of what your concerns here.

4 BY MR. KING:

5 Q I'm respectfully going to have to disagree
6 with you on that.

7 Does any university or college have a
8 policy of arresting every person who was in a
9 fistfight?

10 MR. FAZZOLA: Objection.

11 A Who was involved in a fight?

12 BY MR. KING:

13 Q Yes, sir.

14 A No, no.

15 Q Does any university, to your knowledge,
16 have a policy of escorting off campus any person
17 that was involved in a fight?

18 MR. FAZZOLA: Objection.

19 A Again, you're going to the question of
20 what individual universities -- mine, my former
21 university or any other one, I don't know other than
22 to say that they -- if they -- any college, any
23 university, whether it's Harvard or Podunk
24 University, anywhere, if they have a venue, they
25 have an event, and they witness a fight that they

1 should foresee can have a volatile carryover,
2 someone could be injured and they have a basis for,
3 say, this person is involved in criminal or
4 potentially dangerous activity, they either need to
5 get that person off campus, and they have the
6 authority, everywhere I've ever seen to do that in
7 any structure, any business structure.

8 BY MR. KING:

9 Q Okay.

10 A Give them a warning, walk them out.

11 And you recall this person was only
12 walked -- only walked a short way. No one -- no one
13 escorted the shooter and his two companions to their
14 vehicle to get them off the campus.

15 Q I'm reading back here your answer, it
16 says: They have the authority everywhere I've seen
17 to do that.

18 Can you name any college that does that?

19 MR. FAZZOLA: Objection.

20 A I'm referring to a myriad of businesses
21 I've seen. I would assume under North Carolina law
22 that they would have -- normally it's the owner of a
23 business. Well, I would assume a campus
24 representative, anyone could say I want a trespass
25 warning issued. And we have a -- they should have a

1 policy that these events have been so troublesome
2 for so long, so many years, they should have a
3 specific policy that says, People who are involved
4 in a fight will be trespassed and removed from the
5 campus and barred from the campus for a period of
6 time. Be told, If you come back tonight, you'll be
7 arrested for trespass.

8 BY MR. KING:

9 Q And I'm sorry, I do plan to move on. Can
10 you name any university that has that policy?

11 MR. FAZZOLA: Objection.

12 A No, not aware; never looked into anything
13 like that.

14 BY MR. KING:

15 Q Did Wake Forest have a duty to -- well,
16 let me ask a different question.

17 Is it your understanding that the police
18 did not witness who started the fistfight at The
19 Barn?

20 A That's correct.

21 Q What should the police have done regarding
22 the fight participants if they didn't see who
23 started it?

24 A First thing -- and there was no policy in
25 this regard. No one knew who had the authority to

1 BY MR. KING:

2 Q Do you know what Winston-Salem Police
3 Department's policy is regarding where they station
4 police officers at large events?

5 A No, I do not.

6 Q Do you know what the policy is for any
7 college or university regarding where they station
8 police officers?

9 MR. FAZZOLA: Objection.

10 A It would be -- it would be idiosyncratic,
11 I would assume, to the particular campus, its size.
12 You know, I was on a 32,000 student campus. This is
13 a 5,000 student campus. There would be a lot of
14 variables that would come into it. But one that
15 damn sure doesn't come into it is racial ethnicity,
16 it's got nothing to do with it at all. It's the
17 history of the venue. Where are we having the fires
18 figuratively. That's where we need to concentrate
19 our resources and to try to tamp this thing down.

20 BY MR. KING:

21 Q Again my question was: Do you know what
22 the policy is for any college or university
23 regarding where they station police officers at
24 large events?

25 A No, I do not.

1 Q Do you know what the policy is for any
2 large event in terms of where they station police
3 officers?

4 A Again, in my experience with many large
5 events throughout my career, it depends on the
6 nature of the venue, the circumstances, whether it's
7 a rough area of town, bars where they had a lot of
8 fights and shootings in the parking lot, things like
9 that, or if it's a Disney type, a Universal Studios
10 event where they have excellent private security,
11 very little police presence. It depends on the
12 venue and the circumstances.

13 Q Yeah. So what's the -- what's the
14 neighborhood like around the Wake Forest University?

15 A I couldn't tell you about the -- I know
16 that Wake Forest, I understand, is a pretty upscale
17 university. I don't -- I would imagine there's a
18 normal residential area around it. I have no reason
19 to believe it's in a slum area or, you know, a high
20 crime area.

21 Q Am I correct in understanding that --
22 putting aside your assumptions, you in fact, don't
23 know anything about the area surrounding Wake
24 Forest?

25 MR. FAZZOLA: Objection.

1 A No, I don't. I've never been to Wake
2 Forest University, as I said before, and I don't --
3 I'm not familiar with the contiguous area.

4 MR. KING: Okay. Tanisha, we are going to
5 now go to, I think it will be Exhibit 124,
6 which is Dr. Kirkham's report, please.

7 (Exhibit Number 124 was identified.)

8 MR. FAZZOLA: Hey, Bob, before you start
9 asking questions, can we take a quick bathroom
10 break?

11 MR. KING: Absolute, let's take five.

12 THE VIDEOGRAPHER: The time is
13 approximately 3:22:05 p.m. We are now off the
14 record.

15 (A recess was taken from 3:22 p.m. to
16 to 3:28 p.m.

17 THE VIDEOGRAPHER: The time is
18 approximately 3:29:10 p.m. We're on the
19 record.

20 BY MR KING:

21 Q Dr. Kirkham, do you know whether Wake
22 Forest actually had a plan in place that it normally
23 used so that private security would usher people out
24 when quests -- when parties were over?

25 A My understanding, the role of private

1 A I saw nothing to that effect. I don't
2 know.

3 Q Did you request from plaintiff's counsel
4 that they obtain that for you?

5 A I did not.

6 Q Do you know what the candle foot power was
7 of the lights outside The Barn on the evening of the
8 shooting were?

9 A I don't.

10 MR. KING: Tanisha, I think we are going
11 to do 124, which will be Dr. Kirkham's report.
12 Let's get that in, and then I'll want to do
13 125, his bills right after that.

14 MS. PALVIA: Sure. I introduced on
15 Exhibit Share 124 which will be the report.
16 Would you like me to share my screen, Bob?

17 MR. KING: Yes, if you would. Initially
18 I'll have Dr. Kirkham identify it for us. I
19 appreciate that.

20 BY MR. KING:

21 Q Dr. Kirkham, I want to make sure I got
22 this right. Federal Rule of Civil Procedure
23 26(a)(2) requires that a party produce an expert
24 report for any experts, and I'm quoting here,
25 "retained or specially employed to provide expert

1 testimony in the case," and the report is required
2 to provide the following, quote, "unless otherwise
3 stipulated or ordered by the court, a party's
4 disclosure must be accompanied by a written report
5 prepared and signed by the witness. The report must
6 contain complete statements of all opinions the
7 witness will express and the basis for and reasons
8 for them, the facts or data considered by the
9 witness in forming them, and any exhibits that will
10 be used for summarizing or supporting them."

11 So apologies for the court reporter for
12 the long reading I just did there. I just want to
13 make sure that Exhibit 124, which Tanisha has just
14 put on the screen, contains a complete statement of
15 all the opinions you will express and the basis and
16 reasons for them; is that correct?

17 A Well, it does. You note at the beginning,
18 sort of the caveat that I reserve the right to
19 supplement or amend my report upon receipt of
20 additional information. I've already alluded to the
21 fact that I do not have -- not the fault of anyone,
22 this just was taken apparently -- Kyandra
23 Johnson's -- Kyandra Johnson's deposition. That's
24 important with respect to some of my conclusions.

1 BY MR. KING:

2 Q Okay. And are you aware that the deadline
3 has passed for plaintiff to provide their expert
4 report?

5 A I realize that they had to be in by a
6 certain date, and I proffered to them in a timely
7 manner. But I'm just saying that I -- if discovery
8 isn't open, I -- obviously if I can't -- if I cannot
9 opine any further based on information I have not
10 yet received, I only anecdotally understand about
11 it, I can't do that then.

12 Q Do you currently have any unfinished work
13 other than that deposition; in other words. Are you
14 still working on something for this case?

15 A No, I am not. I don't -- just one second.

16 Q Yes, sir.

17 A Let me get my own copy of it. No, I think
18 the report is comprehensive in its present form.

19 Q Okay. And going back to Rule 26, I read
20 the part where it says "the report must contain a
21 complete statement of all opinions the witness will
22 express and the basis for and reasons for them."
23 Stop right there.

24 My understanding is that that is correct
25 that the report contains all opinions that you will

1 express and the basis for them?

2 A Yes.

3 Q Okay. The report is also required under
4 Rule 26 to provide, quote, "the facts or data
5 considered by the witness in forming the opinions."

6 Does your report contain that?

7 A Yes, an exhaustive list of everything I
8 reviewed.

9 Q Okay. And then it also -- under Rule 26,
10 "the report is required to contain any exhibits that
11 will be used for summarizing or supporting them."

12 Does your report contain that?

13 A I have not appended any exhibits to my
14 report, nor do I plan to.

15 Q Okay. So before we get into the report, I
16 want to ask you about your bill.

17 MR. KING: Tanisha, can you put that up,
18 please?

19 MS. PALVIA: Sure.

20 The bill has been introduced in Exhibit
21 Share as Exhibit 125, and I'm sharing my screen
22 now so everyone can see it. Let me know if you
23 do not see it.

24 (Exhibit Number 125 was identified.)

25 MR. KING: That's good, thank you.

1 2 or \$3,000. Know shortly when he -- he'll
2 summarize it for us.

3 Q Okay. That is helpful, Thank you.

4 MR. KING: So Tanisha, let's go back to
5 the report, please.

6 BY MR. KING:

7 Q I'd like to go to page 6, please. Last
8 full paragraph. You see the last sentence in the
9 last full paragraph, where it says: My role as
10 professor and police officer -- I'm going to prove
11 that I failed Latin, too -- qua researcher spanned
12 18 years of my 20 years as a faculty member at the
13 Florida State University College of Criminology and
14 Criminal Justice.

15 Do you see that?

16 A Yes.

17 Q What does that mean "police officer qua
18 researcher"?

19 A Police officer -- what I clumsily mean
20 inartfully expressing -- is I was a police
21 officer -- first person in the country to do this.
22 I was a pilot ethnographic criminologist who was
23 doing qualitative participant observation researcher
24 -- research, and that is by taking the role --
25 actually taking the role of the acting unit, kind of

1 stuff that Margaret Mead did in Samoa and
2 anthropologists have been doing for a long time,
3 going into a culture or a subculture and mingle with
4 them, take on their folkways and their mannerisms,
5 except that I was the first person with the
6 encouragement of law enforcement officers who were
7 my students and the willingness of my dean and the
8 sheriff of Jacksonville at the time to step into the
9 literal role. I was a fully sworn officer six
10 months, full-time initially, and then for the
11 remaining 18 years or 17 and a half years of that
12 time, I worked as a fully sworn officer on a
13 part-time position. The streets were my laboratory
14 in terms of being able to put on a uniform, check
15 out a patrol car. And I worked in different areas,
16 but I spent a lot of time working the area of the
17 campus, a lot of time working crisis intervention,
18 but it was a rare opportunity, and the first time
19 that it had been done.

20 Q So in -- and I had to step away from the
21 computer because I was having a wi-fi issue. But
22 when were you a full-time police officer, when was
23 that?

24 A It was -- when I first did this, after I
25 finished the academy, I -- my first stint was in

1 Jacksonville, Florida, which is combined
2 police/sheriff's department consolidated city
3 system. Would have been in 1973 from June to
4 December.

5 Q Okay. And have you --

6 A I'm sorry. Yeah. That's right. 1973
7 from June to December.

8 Q Okay. And have you acted as a full-time
9 police officer at any other time?

10 A The only other time would have been under
11 a grant from the U.S. Department of Justice. I had
12 the opportunity to work as an undercover agent with
13 the Broward County Sheriff's Department Organized
14 Crime Unit part of a federal strike force for three
15 months. Got my mugshot on the wall in here
16 somewhere. I can tell you it was like '76, '77.

17 Q Okay. So am I correct the last time you
18 served as a full-time police officer was sometime in
19 the 1970s?

20 A Right. Right. Everything after that was
21 part-time -- fully sworn, but part-time mostly on
22 weekends.

23 Q Okay. I'm sorry. And when you --

24 (Simultaneous talking.)

25 Q Yeah, I'm sorry. The -- so am I correct

1 in understanding that whenever you were acting as a
2 police officer, you were also a professor and you
3 were doing research in the field essentially?

4 A Right. But just to emphasize that I was,
5 you know -- it would be indistinguishable from any
6 other police officer in terms of my uniform and
7 badge and equipment that I carried, and I would work
8 a regular beat or a backup car, and my chief let me
9 start a crisis intervention unit, which we never had
10 before, and I worked with a two-officer car in that
11 because of the nature of calls. We were always
12 handling critical event calls for about five years,
13 so it was -- but I was -- I was there as a
14 researcher, but I was also doing a regular job of a
15 police officer.

16 Q Okay. All right. Let's go to the next
17 page, very top --

18 A Seven?

19 Q Yes, sir. Page 7.

20 A Yes, I'm with you.

21 Q At the very top, it says: The fatal
22 shooting of FSU defensive tackle Pablo Lopez during
23 my tenure as a faculty member was eerily similar in
24 a number of ways to the killing of Najee Baker.
25 Like Baker, Lopez was shot to death by a complete

(Off the record from 4:05 to 4:13 p.m.)

THE VIDEOGRAPHER: The time is

approximately 4:13:41 p.m. We're now on the record.

BY MR. KING:

6 Q So now we're looking at Exhibit 124, which
7 is your report, Dr. Kirkham. On page 14, the last
8 line -- and I apologize, some of this is going to be
9 repetitive because I think we've covered it
10 previously, but I just want to make sure we covered
11 it all.

A All right.

13 Q The very last line says: Najee Baker's
14 killer and his two companions would not have been
15 allowed to enter the property on the night of the
16 murder if Wake Forest Security Officer Jolly had
17 followed the university's policy of checking student
18 IDs of all occupants of vehicles seeking to enter
19 the campus.

Did I read that correctly?

A You did.

22 Q Again, I'm sorry if this is repetitive,
23 was Wake Forest required to have a policy regulating
24 who entered campus?

MR. FAZZOLA: Object to form.

1 A Wake Forest certainly was entitled to
2 develop its own policies, but they certainly should
3 have been -- if we're talking specifically about The
4 Barn, they should have been focused on controlling
5 unwanted ingress of people who were -- I mean, the
6 event purportedly, all the events at The Barn were
7 basically for Wake Forest University students and
8 other students in the area, other universities and
9 not for the public-at-large, and the concern here --
10 and I see this in many other cases, not related to
11 universities where, you know, every -- when you put
12 things out on social media, everybody and his
13 brother shows up, and that's what you're trying to
14 control in terms of sheer volume of people at a
15 large event like that, and, you know, the vehicles
16 getting inundated with people.

17 So they should have -- they needed some
18 system for controlling -- I know we talked a lot
19 about, I couldn't point you to where that policy
20 was, but I read considerable materials that led me
21 to conclude they did have such policy, and the
22 actions of Officer Jolly would seem to be in
23 conformance of that policy, at least a portion of it
24 until he just started opening up the gate and
25 letting people through. So it's important that they

1 control ingress.

2 BY MR. KING:

3 Q Okay. And when you say "it's important to
4 control ingress," is that just for driving on campus
5 or for also walking on campus?

6 A It's also true -- and again, we're talking
7 about it's 10:00 o'clock at night. On any
8 particular night, we got a big event going on at the
9 barn, 570 capacity when they're ticketed, the
10 student -- the people allowed on there. We got to
11 be really focused on all of these things, adequate
12 exterior patrol, adequate police presence inside,
13 adequate cameras, adequate lighting. And also in
14 answer to your question, controlling the entrance to
15 people on foot as well. People want to enter the
16 venue, Where's your student ID?

17 Q And again, I'm not talking about The Barn,
18 I'm talking about this portion of your report where
19 you're talking about actually coming on campus. Did
20 Wake Forest have a duty to limit access onto campus
21 after 10:00 o'clock at night?

22 MR. FAZZOLA: Object to form.

23 A I can't speak to anything like that
24 beyond the -- maybe I inadvertently worded this to make
25 it confusing, but it was not my intent. I'm

1 speaking specifically with regard to events at The
2 Barn venue, the policies that they had, both with
3 regard to pedestrians, and vehicles needed to be
4 really, really tight and utilized cross checking to
5 be sure you got people with student IDs on those
6 nights.

7 I have no opinion on the university
8 policies beyond that as far as when else they should
9 have controlled ingress for other things, I don't
10 have an opinion on that.

11 BY MR. KING:

12 Q Okay. Well, if -- is it your opinion that
13 Wake Forest had a duty, because it was a Barn party
14 going on, to limit access after 10:00 o'clock at
15 night to anybody who wanted to enter campus?

16 MR. FAZZOLA: Objection.

17 A No. Again, their duty was very
18 specifically rifle rather than shotgun
19 metaphorically. Their concern and duty should have
20 been to deal with the foreseeable hazard at that
21 particular location.

22 If you got -- again, I know I mentioned
23 this before, but it's worth repeating, Dr. Penny
24 Rue, the vice president, saying we may double our
25 venue in one hour when people start emailing, they

1 get there, it's a great party, everybody wants to
2 come. We got problems then. We got trouble them.
3 We got to keep the lid on or we're going to have too
4 many people and some people we really don't want on
5 there that are not students that have no legitimate
6 purpose or presence. That's what I'm trying to
7 drill down on.

8 BY MR. KING:

9 Q Okay. And I don't want to -- I don't want
10 to limit you in your answer, Dr. Kirkham, but it's
11 4:15 on Good Friday, so I'm hoping we can focus on
12 the specific question I'm asking. Right now, I'm
13 not talking about getting into The Barn, I'm talking
14 about getting in campus, okay? Are we on the same
15 page?

16 A We are. And I think, with all due
17 respect, Bob, I think we're talking apples and
18 oranges here. I'm not concerned -- my focus is on
19 The Barn, with the foreseeability of people coming
20 into The Barn, and that's why I'm concerned with
21 the -- both the pedestrian and vehicular entrée.

22 Q Okay. So do you -- again, we're going to
23 put the entry into The Barn on the shelf for just a
24 minute.

25 Are you expressing an opinion as to

1 whether or not Wake Forest had a duty to limit
2 access onto campus after 10:00 o'clock at night?

3 A No. I don't -- and I don't have the
4 predicate for, in this file, to speak to things
5 other than The Barn. I don't know.

6 Q Okay. Thank you for that. The top -- the
7 next sentence on page 15 says: Video footage shows
8 Jolly putting out a sign indicating one entrance was
9 closed and subsequently waving arriving cars through
10 the other entrance without checking IDs of everyone
11 in each vehicle.

12 Did I read that correctly?

13 A You did.

14 Q Okay. And I apologize to the dead horse
15 I'm going to beat, but am I correct in understanding
16 that where you referred to a policy regarding access
17 through the gate, am I correct in understanding you
18 are not expressing an opinion on that?

19 MR. FAZZOLA: Objection.

20 A I am expressing an opinion with regard --
21 again, to be sure I'm responding to your question --
22 about celling vehicular and pedestrian access on
23 Barn event nights.

24 BY MR. KING:

25 Q Okay. Okay. So that's where I'm getting

1 people with student IDs?

2 A Yes, pursuant to what I understood was
3 their policy.

4 Q Have you seen any document that says this
5 is the policy for entry into The Barn?

6 MR. FAZZOLA: Object to form.

7 A You know, I am certain that I have read
8 that somewhere, but I -- at this hour, I'm not sure
9 where it was.

10 BY MR. KING:

11 Q Okay. And the difficulty I got, as I
12 think I mentioned before, you got a whole lot of
13 opinions in here without any citations at all. So
14 it is -- if it is your opinion that Wake Forest had
15 a duty to limit access to The Barn on the evening of
16 the shooting to people with student IDs, can you
17 point me to anything that supports that question?

18 MR. FAZZOLA: Object to form.

19 A With all due respect I know you've been
20 trying to elicit that from me, and I would tell you
21 if I knew, but I don't know.

22 BY MR. KING:

23 Q Okay. So we are at the bottom of page 15.
24 If the student event hosts that night had been
25 required to provide a list of all registered guests

1 to Wake Forest University Police Department prior to
2 the event as had been Wake Forest policy for at
3 least some period in the past for on campus events
4 for off campus guests, as Wake Forest knew or should
5 have known was a standard policy and practice of
6 other colleges and universities in the area for on
7 campus parties open to off campus guests, Austin and
8 Smith would have been barred from entering since
9 their names would not have been on the authorized
10 listed invitees.

11 Did I read that correctly?

12 A You did.

13 Q Did Wake Forest have a duty to only allow
14 people on campus on the evening of the party if
15 their name was on a list given to people operating
16 the gate?

17 A With respect to access to The Barn, yeah.
18 You had to be -- that was the purpose of the pre
19 submitted list to the police department.

20 Q Okay. And my understanding is that your
21 basis for saying that Wake Forest had a duty to
22 limit access to The Barn to people with student IDs
23 is that you believe that was in a policy that Wake
24 Forest had?

25 MR. FAZZOLA: Object to form.

1 A Yes. Either a written or de facto policy
2 that they had been following.

3 BY MR. KING:

4 Q Are you aware of whether any other -- or
5 any colleges and universities limit access to on
6 campus parties to people who present student IDs?

7 A Again, you'd have to relate that to the --
8 if it was some real problematical spot. I mean,
9 understand, I'm not throwing rocks at the idea of
10 having a facility like The Barn, which -- and I
11 understand the black students didn't have the
12 resources or enough of them to enable them to have
13 regular sorority lounges and so forth, fraternity
14 lounges. It's a fine idea, but you got to -- when
15 you're having these kind of problems, you got to
16 have appropriate security to protect people in
17 there.

18 BY MR. KING:

19 Q Okay. My question is: Can you name for
20 me any college or university that limits entry to
21 parties to people who present student IDs?

22 A No --

23 MR. FAZZOLA: Object to form.

24 A -- never looked into it.

1 BY MR. KING:

2 Q In that same sentence that I just read
3 you, you refer to a standard policy and practice of
4 other colleges and universities. What are you
5 referring to there?

6 A I don't -- I'm trying to figure out if it
7 had any reference to the survey. I don't think the
8 survey of the ten schools dealt with that. It may
9 have come from somewhere else. It's common for --
10 it's common for facilities to have a pre submitted
11 authorized list of attendees. I've seen that in --
12 well, I'm thinking of another case where there
13 was -- at least one that I can think of right now,
14 where there's a required guest list to be submitted
15 prior to the -- prior to the event.

16 Q My question is: Did Wake Forest have a
17 duty to limit access to people on a list that was
18 generated before the party?

19 A No. They could have decided not to do
20 that, but everything you do or don't do you got to
21 consider the safety of it.

22 Q I understand. At this point I'm trying to
23 understand if your opinion is that Wake Forest had a
24 duty to limit access to The Barn to people on
25 presold tickets, and am I correct in understanding

1 A You read it absolutely correctly.

2 Q Okay. What sort of analysis did Wake
3 Forest undertake before instituting the hybrid
4 approach?

5 A You know, that's an excellent question.
6 As closely as I can tell, this was an arbitrary,
7 capricious and foreseeably dangerous act that they
8 accepted from -- and I'm sure Dr. Goldstein has many
9 other redeeming qualities, but he knows as much
10 about security and crime prevention as I know about
11 microbiology or astronomy. He knows nothing at all
12 about it, and they just accepted it on his word and
13 by fiat, accepting it, they said, Hey, we are going
14 to go to a -- we're going to save money and we're
15 cutting it, and we're going to make -- black
16 students won't be offended by the presence of
17 police, so we're going to get rid of this protective
18 measure. We're going to police -- limit the police
19 to one. I mean, I've never seen anything in my
20 entire career like this: Let's cut the police in a
21 dangerous situation. Let's reduce them.

22 Over-policing is something -- I heard you
23 use the word earlier. It's really never been part
24 of my professional vocabulary.

25 Q Dr. Kirkham, I really don't want to cut

1 Do you know what experience Dr. Goldstein
2 had with large event management?

3 A No, I don't.

4 Q Do you know where Dr. Goldstein was before
5 he came to Wake Forest?

6 A He was at my university, Florida State.

7 Q Okay. And are you aware he was involved
8 to a great deal with large event management while he
9 was at G state?

10 MR. FAZZOLA: Objection.

11 A I've seen that in his -- his article
12 references to event management. That's one of the
13 things.

14 BY MR. KING:

15 Q Do you have any experience with large
16 event management?

17 A No, but I have had quite a bit of
18 experience in crime prevention.

19 Q Does the person who runs large events at
20 FSU have law enforcement experience?

21 MR. FAZZOLA: Objection.

22 A Again, I have no idea as to who is in
23 charge of large event management at FSU, let alone
24 their experience.

1 think that's reflected in the comments of different
2 police personnel, people like Fisher and Gravely and
3 people like Hickman from Rhino. These were not
4 things that suddenly stopped, and it was
5 foreseeable -- I know I told you a number of times
6 that they would be exacerbated by the lack of police
7 presence both inside and outside. Just -- and in
8 the parking areas and on and on.

9 Q So is it your opinion that if
10 African-Americans feel like they're being
11 over-policed, the way to deal with that is to
12 explain to them that it's for their own good?

13 MR. FAZZOLA: Objection.

14 A Essentially you're talking about a
15 misperception borne of stereotyping, and what you
16 don't do -- I've been in that situation as a ghetto
17 police officer, you sit down with the people
18 involved and you talk to them. You become a name to
19 them. I'm George Kirkham. See my name on my badge
20 here? You know, and you don't -- what you don't do
21 is withdraw protection from them.

22 That -- as I say, that would have the
23 perverse effect of even though you didn't intend it
24 to be racist, ironically it would be racist. You'd
25 be depriving a racial minority of the right to

1 protection simply because they're a minority.

2 BY MR. KING:

3 Q And that's based on your experience as
4 police officer 40 something years ago?

5 MR. FAZZOLA: Objection.

6 A Yes. I think that, and my interaction
7 with blacks over the years as a police officer as
8 well.

9 There's a legitimate reason for black
10 people to feel that they suffer disproportionate
11 discrimination. No question about that. But this
12 is a situation where you can talk to people, you can
13 explain to them, We're out here to protect you. And
14 you can do it in an inoffensive way. There are some
15 bad cops that may send the wrong message, but the
16 appearance of police officers -- and if you want to
17 -- look, if you want to have fewer officers out
18 there, you can use camera, you can use video, modern
19 video cameras to a central station. Have some
20 officers out that are able to respond quickly and
21 you got to respond quickly. But you don't -- to
22 say -- to capitulate to a misperception -- now, the
23 Developmental Associates said, Yeah, there's some
24 perception of improper treatment or over-policing.

25 The way you respond to that is to sit down

1 with the people involved, the fraternities, the
2 sororities, the Pan-Hellenic council people and
3 explain to them, What we're doing, it's absurd to
4 say, well, you know what, we got to have the same
5 police for everybody. It's -- the amount of
6 security and police is venue driven, driven by the
7 problems in the venue, not by the color of anyone's
8 skin.

9 BY MR. KING:

10 Q Do you feel like you've got expertise in
11 explaining to African-Americans the fact that the
12 increase police is for their own good?

13 MR. FAZZOLA: Objection.

14 A Well, yes, I mean, I've authored an award
15 winning training series of pro bono I did under
16 government funding years ago on problems with
17 police, problems of racism and discrimination, and
18 I'm as aware as a white person can be of the reality
19 of discrimination. But you -- but it is
20 counterproductive to say, you know, we are going
21 to -- and this is just purely a brain child of
22 Goldstein in his head, he thinks, he feels, he has a
23 hunch that this is the way it is, instead of just
24 simply trying to institute measures that are safe
25 and they're inoffensive and then to explain to

1 people, explain to students, yeah, these are
2 intelligent young people. This is the reason we're
3 doing this. We can't have the lights down this low,
4 can't do it, and we've got to have these other
5 measures we're talking about, otherwise we can't
6 hold these events because they're too damn
7 dangerous.

8 BY MR. KING:

9 Q Have you been involved in that sort of
10 conversation with any minorities since the 1970s?

11 MR. FAZZOLA: Objection.

12 A As a police officer for 18 years as part
13 of my research, I dealt -- I worked with minority
14 neighborhoods and responded to every kind of any
15 minority call, and I've had to deal with that as
16 every police officer does.

17 BY MR. KING:

18 Q Let's go to page 20.

19 A Twenty, okay.

20 Q I won't read this on the record, but if
21 you would take a minute to look at the two full
22 paragraphs there and let me know when you're done.

23 A The top and the middle paragraph or the
24 bottom?

25 Q Yes, sir. I'm sorry. The one that starts

1 that?

2 Over the last ten years, how does your
3 representation break down plaintiff versus defendant
4 percentage-wise?

5 A Well, it depends on the type of case. In
6 premises liability, it's 50/50. In police cases,
7 it's probably up around 70 plaintiff, 30 percent
8 defense.

9 Q Do you know what being tendered to the
10 court means?

11 A I do tender to the court as an expert
12 witness.

13 Q Okay. Have you ever been tendered to the
14 court and the court refused to accept your opinions
15 or refused to accept you as an expert?

16 A The only -- can I only recall in a
17 thousand -- a couple thousand cases over 40 some
18 years, a couple of instances where -- see, the only
19 way I know, as a nonlawyer, if I'm not going to be
20 allowed to testify, if the judge says "You may not
21 testify, doctor," that's only happened a couple
22 times.

23 I will tell you I have had a -- because
24 it's in recent memory -- a couple years ago where a
25 visiting judge in Austin, Texas in response to a

1 Daubert motion granted it, and other federal judges
2 in the same venue in the same two-year period had
3 qualified me as an expert in the use of force. I
4 thought it was an ad hominem attack, but it was what
5 it was, so it's a very rare occurrence.

6 Q Have you ever had a court refuse to accept
7 your testimony because they found that it was not
8 based on sufficient facts or data?

9 MR. FAZZOLA: Objection.

10 A No. Again, I don't follow case law, but
11 the only way I know unless the lawyer tells me
12 something -- it should be very rare -- is if I'm
13 sitting in there and the judge says you can't
14 testify because you're not an expert on K-9s, for
15 example; you're a use of force expert.

16 BY MR. KING:

17 Q Has that happened?

18 A It happened once in New Mexico in
19 Albuquerque. I understand where the judge was
20 coming from. A barricaded suspect had come out, his
21 hands up, and they put the dog on him. And I
22 said -- I said -- the court said: You're not --
23 Dr. Kirkham, you're not an expert on K-9s?

24 And I said, No, Your Honor. I barely know
25 one end of the dog from the other, but I'm an expert

1 on use of force, and I know where the continuum of
2 force where a K-9 belongs and what they're used for
3 and what they're not used for.

4 That being said, the judge would not let
5 me testify in that case.

6 Q Other than that case, are you aware of any
7 other situations in which your testimony was not
8 accepted by the court because it was not based on
9 sufficient facts or data?

10 A Well, the one I just describing you, would
11 you call that insufficient facts and data? I'm
12 trying to respond to that. That's the only one I
13 can recall. The only one I can recall at this hour.

14 Q Okay. I've got seven notebooks with your
15 reports in them, so I'll figure it out myself.

16 A Okay.

17 Q Have you ever been retained -- have you
18 ever had a situation in which you were retained by
19 the plaintiff and you did not find any fault in what
20 the defendant did?

21 A Yes. I've had a number of, for example,
22 police cases like that where -- I'm thinking of one
23 particularly with an attorney I worked with for 30
24 years, and even after a long woodshedding by him, I
25 had to tell him it was a good shoot. I would have

1 shot too. I had a number of cases like that over
2 the years. And I -- you know, my feeling is I
3 just -- you know, all you have in my line of work is
4 your reputation for objectivity and veracity, and I
5 just call them as I see them. I'm not an advocate.
6 Though I understand experts are used in advocacy,
7 but sometimes I have bad news for plaintiffs and bad
8 news for defendants.

9 Q Have you ever been involved in either
10 designing campus security or advising a college on
11 improving campus security?

12 A No, I have not.

13 Q Let's do this. Let's take about a
14 ten-minute break. I'm going to look at what I got
15 and we'll try to wrap it up real quick.

16 A Okay.

17 THE VIDEOGRAPHER: The time is
18 approximately 5:45:45 p.m. We are now off the
19 record.

20 (A recess was taken from 5:45 p.m. to 5:57
21 p.m.)

22 THE VIDEOGRAPHER: The time is
23 approximately 5:57:14 p.m. We are now on the
24 record.

25

1 STATE OF NORTH CAROLINA)

2 COUNTY OF FORSYTH)

3 REPORTER'S CERTIFICATE

4 I, Audra Smith, Registered Professional Reporter
5 in and for the above county and state, do hereby certify that
6 the deposition of the person hereinbefore named was taken
7 before me at the time and place hereinbefore set forth; that
8 the witness was by me first duly sworn to testify to the
9 truth, the whole truth and nothing but the truth; that
10 thereupon the foregoing questions were asked and the foregoing
11 answers made by the witness which were duly recorded by me by
12 means of stenotype; which is reduced to written form under my
13 direction and supervision, and that this is, to the best of my
14 knowledge and belief, a true and correct transcript.

15 I further certify that I am neither of counsel to
16 either party nor interested in the events of this case.

17 IN WITNESS WHEREOF, I have hereto set my hand
18 this 16th day of April, 2021.

19 Audra Smith

20 
21

22
23 Audra Smith, RPR, FCRR

24
25 Notary Number: 201329000033